

**Custody (Amendment) Bill 2013 –
Clauses considered**

The President: Clauses.

Mr Coleman: Madam President, turning to the clauses, clause 1 gives the short title of the Bill as the Custody (Amendment) Bill 2013.

I beg to move that clause 1 be approved.

Mr Butt: I beg to second, Madam President, and reserve my remarks.

The President: The motion is that clause 1 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.

Clause 2.

Mr Coleman: Thank you, Madam President.

Clause 2 deals with the issues outlined in my Second Reading speech in the following ways: it substitutes section 19A of the Custody Act 1995 with provision that is similar but different in three important ways. Firstly, it uses more direct language by providing for the taking of ‘a non-intimate sample’, rather than ‘a sample that is not an intimate sample’, as before. Secondly, it addresses the issue that the current most effective method of testing for the presence of a controlled drug is by taking a sample urine, and therefore subsection (4)(a) provides for the taking of a sample of urine. Thirdly, although testing for alcohol is not a part of the regular testing regime, this substituted section adds subsection (4)(b), which empowers the taking of a sample of breath.

Madam President, I beg to move that clause 2 be approved.

Mr Butt: I beg to second, Madam President, and reserve my remarks.

The President: The Hon. Member, Mr Braidwood.

Mr Braidwood: Thank you, Madam President.

It is just a question... I totally agree with what is happening and the clarification of the legal requirement to take a sample, but if the person who is tested drugs proves positive, what happens then? It might be where the drugs are secreted on his presence. How do you find if he has got drugs on him? I believed through the British Medical Association that no intimate searches are allowed.

The President: The Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Again, no issues with the Bill – full support. Just out of personal interest, is there an assessment as to the scale of the problem in the Prison that this legislation is going to address?

The President: The Hon. Member, Mr Downie.

Mr Downie: Just to broaden the point slightly, I see a person being in prison no different from any other person who is a top-class athlete or in some of these other areas where random testing is really part of accepted life and if there are problems in prison with people obtaining alcohol illegally or drugs illegally, that is a regime that we have got to expect in this day and age because if we drop our guard people could get all sorts of drugs into prison and you could finish up in a situation where some of these things that are available now – crack and things like that – they can wreak havoc in prison populations. We see this to its worst effect occasionally, when you see prison riots in other

countries and places like America and South America. So I can support us having a proper, well maintained and well organised regime to keep prisoners constantly monitored, to make sure that the prevention methods are in place.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

This Bill relates to finding traces of samples of drugs which have been previously taken by using these methods as delineated in the Bill. If there is a suspicion that there are actual drugs in their possession – drugs, not just traces of drugs – then the powers of the Drugs Acts will come into force and Mr Braidwood's point about searching then is that the searches would then take place under the Drugs Acts, rather than this legislation.

So this is purely about finding traces of drugs in the blood or in the urine, or in the hair or any other sample to show had they previously been taking drugs, and I think the other issue is a separate matter.

Madam President, thank you.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

Is the testing for... It will be for all prisoners, I would assume, and for new prisoners, it would be to see if they had taken drugs before they were admitted to prison. But if they are existing prisoners, how would the drugs get into the Prison?

Mr Braidwood: Ways and means!

Mr Butt: Let me count the ways! *(Laughter)*

The President: The mover to reply, please.

Mr Coleman: Firstly I will respond to the Hon. Member, Mr Braidwood. I think this is really a separate issue and refers to blood samples more than what we are talking about here. Intimate searches are allowed in there. We have a drug dog in there, we have drug dogs which can come in and sniff in the cells and look for things.

In response to the Hon. Member, Mr Wild, the testing is done on a risk assessed basis of prisons and by a random number generating program to do random testing. The failure rate is 10%.

Mr Braidwood: It's quite high.

Mr Coleman: So I think that that scale fully justifies this Bill going through very quickly!

With reference to how the drugs get in, there are visit days and one would suspect that perhaps the substances can be passed during visits by various methods.

I think I have explained about who will be tested. Obviously there is an intimate search done, I think at reception, when they come into prison and the existing prisoners are subject to the regime of risk assessment and random number selection.

The President: Does that conclude your remarks? **(Mr Coleman: Yes.)**

In that case, the motion is that clause 2 do stand part of the Bill. Those in favour, please say aye; against, no. The ayes have it. The ayes have it.